IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR

WRIT PETITION No. 2230 /2001

PETITIONER : Gurmukh Singh Hora, son of late Shri Amreek Singh Hora, aged about 53 years, Chairman, Chhattisgarh State Co-operative Marketing Federation Limited, resident of Kawardha, Distt. Kawardha (C.G.)

3/12/01
Shri B. Prayag
29/12/01

VERSUS

RESPONDENTS :1. State of Chhattisgarh, through Secretary, Co-operative Department, Mantralaya, D.K. Bhawan, Raipur (C.G.)

2. Mr. B.K.S. Ray, Registrar, Co-operative Societies, Raipur (C.G.)

3. Chhattisgarh Co-operative Marketing Federation Limited, having its office at 880, Civil Lines, Raipur (C.G.)

4. Mr. L.S. Shome, Deputy Registrar, Co-operative Societies, Kanker, Distt. Kanker (C.G.)

5. Shri S.R.K. Chandrawanshi, Assistant Registrar (Audit), Co-operative Societies, Kawardha, Distt. Kawardha (C.G.)

6. Shri Vasudeo Chandrakar, Director, Chhattisgarh Co-operative Marketing Federation, resident of Durg (C.G.)

7. Shri Mohan Chandrakar, Director, Chhattisgarh Co-operative Marketing Federation, resident of Bilaspur (C.G.)

8. Shri Aytaram, Director, Chhattisgarh Co-operative Marketing Federation, resident of Dantewada, Dist. Bastar (C.G.)

शपथ आयुक्त, बिलासपुर 29/12/01

Directors appointed
Counsel On duty
3-9-2002
3-9-2002

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29.12.01

9. Shri Pradeep Kumar Gupta,
Director, Chhattisgarh Co-operative
Marketing Federation, resident of
Jashpur, Dist. Jashpur (C.G.)

10. Shri R.K. Dubey, son of not known,
Resident of Brahman Para,
Raipur (C.G.)

11. Ajeet Chandrawanshi,
Chairman, Co-operative Marketing
Society, Kawardha,
Dist. Kawardha, (C.G.)

12. Abdul Rasheed,
Director, Chhattisgarh Co-operative
Marketing Federation, resident of
Sarguja, Dist. Sarguja (C.G.)

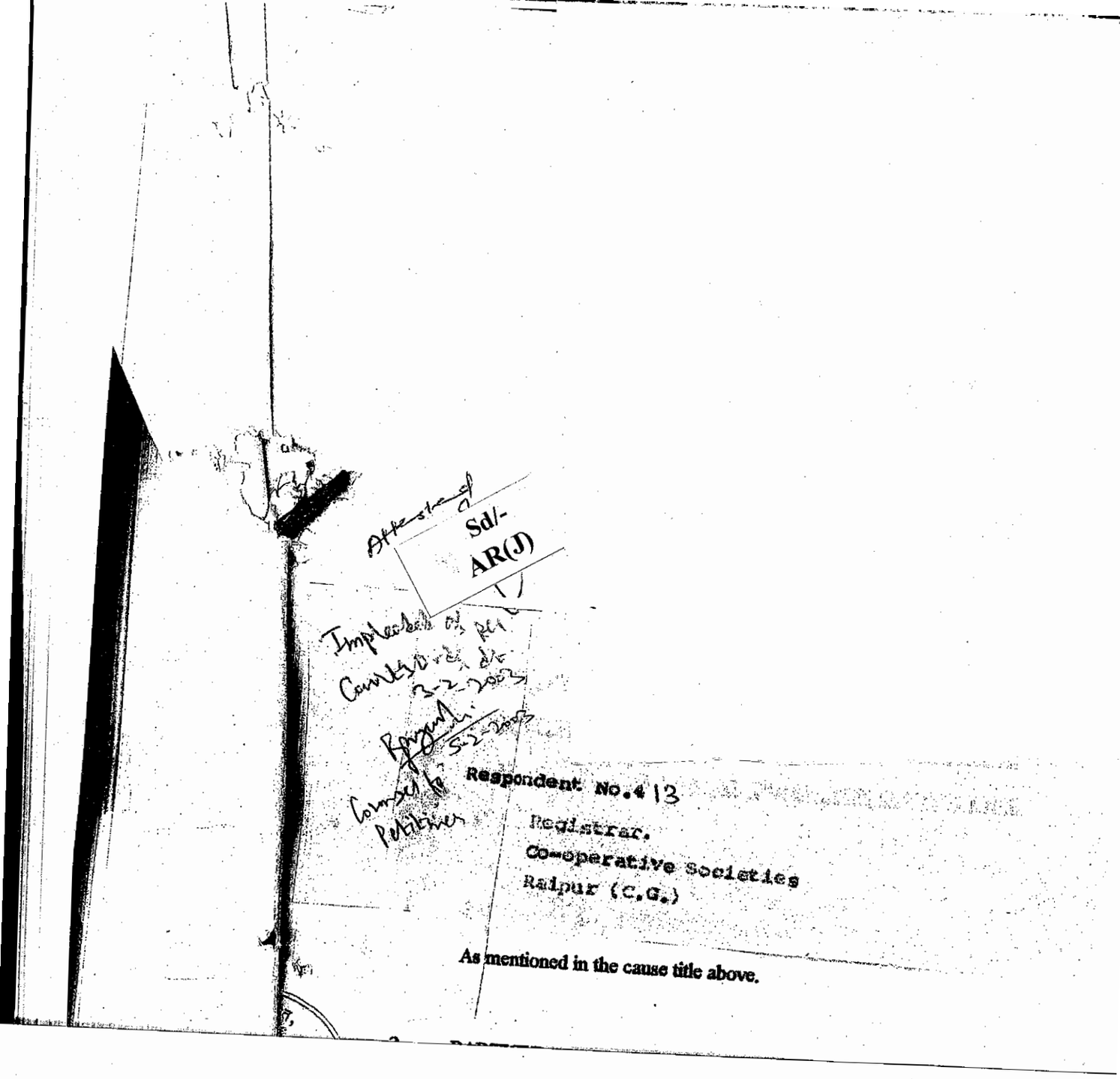
Sd/-
AR(J)

Respondent No. 4 13
Registrar,
Co-operative Societies
Raipur (C.G.)

As mentioned in the cause title above.

2. PARTICULARS OF THE RESPONDENTS :-

As mentioned in the cause title above.



Sd/-
AR(J)

Respondent No.4 13

Registrar,
Co-operative Societies
Raipur (C.G.)

As mentioned in the cause title above.

(221)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.2230 of 2001

Gurumukh Singh Hora

Versus

The State of Chhattisgarh and others

ORDER FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge
27-2-2004

HON'BLE THE CHIEF JUSTICE

I agree.

Sd/-
Chief Justice
-3-2004

POST FOR ORDER ON 8TH MARCH 2004

Sd/-
L.C.BHADOO
Judge
-03-2004

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HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.2230 of 2001

Gurumukh Singh Hora

Versus

The State of Chhattisgarh and others

Present: -

Shri Alok Aradhe, Advocate with Shri P. Diwakar and Shri Bhaskar Pyasi, Advocates for the petitioner.

Dr. N.K. Shukla, Additional Advocate General for respondents 1, 2, 4 and 5.

Shri Satish Gupta, Advocate for respondents 6 and 9.

Shri Prashant Mishra, Advocate for the intervener.

Division Bench*: Hon'ble Shri K.H.N. Kuranga, C.J.
and Hon'ble Shri L.C. Bhadoo, J.

ORDER

(Passed on 8th March, 2004)

As per L.C. Bhadoo J.

The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India challenging the legality and validity of the various show cause notices issued to him.

2. The main relief sought by the petitioner in this writ petition is to quash the show cause notice, Annexure-P/39 dated 12-10-2001 issued by the Deputy Registrar, in which the petitioner was asked to submit a reply within 3 days. Notice Annexure-P/37 dated 11-10-2001 issued by the Assistant Registrar, Co-operative Societies (Audit) Kanker, regarding the enquiry pending before that authority. The notice Annexure-P/41 issued by the Registrar on 16-11-2001 requiring the petitioner to submit an explanation as to why the order dated 17-2-1997 by which the petitioner was elected as Director of the District Co-operative Central Bank, Rajnandgaon be not cancelled, show cause notice Annexure-P/44 dated 9-11-2001 by which the petitioner was asked as to why he should not be expelled from the membership of the society and notice Annexure-P/46 dated 8-11-2001 issued by the Additional Registrar whereby the Members, Directors and other members have been asked to show cause as to why the registration of the society

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be not cancelled. The other reliefs sought are that the petitioner may be allowed to continue as Chairman of respondent No.3 and also to quash the order dated 28-2-2000, Annexure-P/49, appointing the official assignee to take over the charge of primary Society, Kawardha.

3. The petitioner's case is that he was initially inducted as a Member of Prathamik Vikas Sabji Fal Phool Utpadak Avam Vipnan Sahkari Samiti Maryadit, Kawardha and thereafter he was elected as delegate of the said Samiti for the District Co-operative Society and from where he was elected one of the Directors of the Marketing Federation and finally he was elected as Chairman of the Marketing Federation for a term of five years w.e.f. 4-1-1997 to 3-1-2002. Other necessary facts have already been mentioned in the order passed by this Court while disposing of the writ petition No.236/2002 filed by the petitioner for allowing him to continue till the elections of Chhattisgarh Co-operative Marketing Federation are held.

4. Return has been filed on behalf of respondents 1, 2, 4, 5 and 13 in which it has been mentioned that for the dispute raised by the petitioner, the petitioner ought to have approached the Co-operative Tribunal at Bhopal constituted under Section 77 of the Act, therefore, effective, efficacious and alternative remedy is available to the petitioner.

5. As far as issuance of the notices are concerned, the Registrar is entitled to conduct an enquiry into the allegations against the petitioner as well as the Primary Society i.e. Prathamik Vikas Sabji Fal Phool Utpadak Avam Vipnan Sahkari Samiti Maryadit, Kawardha. The said primary society was constituted by the petitioner only to become representative of the District Level and when the matter was enquired into, this allegation was found true. An enquiry was conducted after giving opportunity to the petitioner under Section 18-A (1) of the Co-operative Societies Act, 1960 and thus the Society was not in existence. The proceedings of deregistration have been conducted according to Section 18-A of the Chhattisgarh Co-operative Societies Act, 1960 and the rules made thereunder.

6. Further enquiry was conducted about the eligibility of the petitioner to become a member of the said Society and the enquiry was resulted in the conclusion that the petitioner was not eligible to become a primary member of the said Society, which is evident from Annexure-R/2. The primary Society from where the petitioner became delegate is already deregistered vide order dated 27-2-2002. By virtue of the Rule 45 of the Chhattisgarh Co-operative Societies Rules, 1962, if a society ceased to exist its representative or delegate also ceases

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to represent in Central or Apex Societies. It is denied that the action taken by respondents is malafide. The petitioner has already completed his tenure; therefore, he has no right to continue in the post of Chairman of the Apex Society. Since, the primary society of which the petitioner was a member is already deregistered, therefore, the petitioner ceases to be eligible to be a member of that Society and represent that Society in the Apex Society. Therefore, the petition be dismissed.

7. We have heard Shri Alok Aradhe with Shri P. Diwakar, learned counsel for the petitioner; Dr. N.K. Shukla, Additional Advocate General for respondents 1, 2, 4 & 5; Shri Satish Gupta, learned counsel for respondents 6 & 9; and Shri Prashant Mishra, learned counsel for the intervener/respondent No.13.

8. At the outset, it may be mentioned that in the order dated 8th. March. 04. disposing of the writ petition No.236/2002 it has been held that the petitioner was not entitled to continue after the expiry of the original term of the Board i.e. after 3-1-2002. The term of the marketing federation was not extended by the notification dated 28-10-2000, as the same was not applicable in respect of the State Co-operative Marketing Federation Limited. Under sub-section 7-AA of Section 49 of the Co-operative Societies Act, 1960 one year term was extended by notification dated 28-10-2000 of those Societies which were non-agricultural and non-credit Societies whereas, the petitioner Co-operative Marketing Federation Limited is an agricultural and credit Society. Even otherwise, by this writ petition the petitioner has simply challenged the enquiries initiated vide Annexure-P/39 dated 12-10-2001, notice Annexure-P/37 dated 11-10-2001, notice Annexure-P/41, notice Annexure-P/44 dated 9-11-2001, notice Annexure-P/46 dated 8-11-2001 and the order dated 28-2-2000 Annexure-P/49 whereby the Registrar has appointed Co-operative Extension Officer as the official assignee whereas, in pursuance of these notices enquiries have already been completed and ultimately the Registrar after passing order dated 27-2-2002 deregistered the primary Society under Section 18-A (1) of the Act of 1960 i.e. Prathamik Vikas Sabji Fal Phool Utpadak Avam Vipnan Sahkari Samiti Maryadit, Kawardha and cancelled the registration No.344 dated 20-9-96. In pursuance of that, vide order dated 28-2-2002, as per the provisions of Section 18-A (2) of the Act, the Registrar has appointed Co-operative Extension Officer, Kawardha as the official assignee of the Society and in this writ petition the petitioner has not challenged the order No.2002/846, dated 27th February 2002 whereby the registration of the Society has been cancelled. Without challenging that order the petitioner is not entitled to any relief.

9. Mr. P. Diwakar, learned counsel for the petitioner argued that today i.e. 24-2-2004 he has filed copy of the order dated 27-2-2002 which is in the file whereby the registration of the petitioner Society was cancelled and the respondents have also filed that order with their return. Since copy of the order dated 27-2-2002 is available on the record of the file, the Court can take cognizance of the same and quash that order also.

10. In this connection, the learned counsel for the petitioner relied upon a decision of the Hon'ble Apex Court in the matter of **HINDALCO INDUSTRIES LTD. Versus UNION OF INDIA AND OTHERS** reported in **(1994) 2 Supreme Court Cases 594.** The facts of this case were that Hindalco Industries filed a claim before the Tribunal and the claim of the Company was allowed by the Tribunal from the date of the judgment against which the Company approached the Hon'ble Apex Court saying that it should have been made effective from the date of institution of the claim, even though specific prayer was not made in the claim itself that freight should be reduced from the date of filing of the claim. While dismissing the appeal the Hon'ble Apex Court has held that 'it being a discretionary relief and the Act having left that discretion to the Tribunal, it appears to have felt that it would be just to give relief from the date of judgment to meet the ends of justice. The appellant is not, as of right, entitled to the relief.' In that context, the Hon'ble Apex Court held that:

> "It is settled law that it is no longer necessary to specifically ask for general or other relief apart from the specific relief asked for. Such a relief may always be given to the same extent as if it has been asked for provided that it is not inconsistent with that specific claim which the case raised by the pleadings. The court must have regard for all the relief and look at the substance of the matter and not its forms. It is equally settled law that grant of declaring relief is always one of discretion and the court is not bound to grant the relief merely because it is lawful to do so. Based on the facts and circumstances the court may on sound and reasonable judicial principles grant such declaration as the facts and circumstances may so warrant. Exercise of discretion is not arbitrary. If the relief asked for is as of right, something is included in his cause of action and if he establishes his cause of action, the court perhaps has been left with no discretion to refuse the same. But when it is not as of right, then it is one of the exercise of discretion by the court. In that event the court may in given circumstances grant which includes 'may refuse' the relief."
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> **(Emphasis supplied)**

The principle laid down by the Hon'ble Apex Court in the above matter, is of no help to the petitioner in the present case, as the petitioner has filed this petition only against the show cause notices and order dated 28-2-2002 appointing official assignee and during the pendency of the petition the Society itself was deregistered by the Additional Registrar invoking the provisions of Section 18-A (1) of the Co-operative Societies Act, 1960 which has not been challenged by the petitioner. Unless it is specifically challenged on the grounds available to the petitioner the same cannot be quashed terming it as a general or other relief apart from the main relief because quashing of order dated 27-2-2002 is the main relief which has not been questioned in this petition.

11. In order to seek the quashing of the order dated 27th February, 2002 deregistering the Society the petitioner ought to have sought a specific relief and he ought to have set out the grounds on which the said order is stated to be arbitrary and illegal or has been passed violating the principles of natural justice, which the petitioner has not done in this case. Therefore, unless the quashing of the order dated 27th February, 2002 is sought by the petitioner, the petition is liable to be dismissed.

12. The Prathamik Vikas Sabji Fal Phool Utpadak Avam Vipnan Sahkari Samiti Maryadit, Kawardha which was deregistered by the Additional Registrar, Co-operative vide his order dated 27th February 2002 under the enabling powers of Section 18-A (1) of the Co-operative Societies Act, 1960 which reads as under:

> "**S. 18-A (1):** If the Registrar is satisfied that any society is registered on misrepresentation made by applicants, or where the work of the society is completed or the purposes for which the society has been registered are not served, he may, after giving an opportunity of being heard to the chief promoter, the committee and the members of the society, de-register the society.'

On receiving the complaint the Additional Registrar, Co-operative issued show cause notice, Annexure-P/46, on 8-11-2001 to the Members, Directors and other members of the Society that in his opinion the object was not being fulfilled for which the Society was registered, therefore, why the Society should not be deregistered. It was further made clear that if they want, they are entitled to make written submissions and they can also make oral submissions and for that purpose the date 27th November 2000 was fixed. A perusal of the order dated 27-2-2002 reveals that the Additional Registrar considered the written reply submitted by the petitioner and after considering the records and reply of the petitioner ultimately held that the petitioner has failed to establish that the Society is fulfilling its

objectives and Brijlal Agrawal, Member, has supported his charges that since last five years the Society has not been able to fulfill its objectives as per the provisions of Section 4 of the Chhattisgarh Co-operative Societies Act, 1960 and finally he ordered for de-registration of the Society i.e. Prathamik Vikas Sabji Fal Phool Utpadak Avam Vipnan Sahkari Samiti Maryadit, Kawardha under Section 18-A(1) of the Chhattisgarh Co-operative Societies Act, 1960, therefore, the Additional Registrar deregistered the Society after exercising the powers under Section 18-A(1) of the Co-operative Societies Act, 1960. This order has not been challenged. Moreover, it has also not been challenged that the enquiry conducted by the Additional Registrar suffers from the vice of arbitrariness or illegality or violative of the principles of natural justice on account of not following the procedure as envisaged under the law. Therefore, on these grounds the petition is liable to be dismissed.

13. The learned counsel for the petitioner argued that the said order has been passed by the Additional Registrar of the Co-operative Societies whereas, it should have been passed by the Assistant Registrar Co-operative Societies. A perusal of Section 18-A (1) of the Act reveals that the Registrar is competent to pass an order under that section and Section 3 of the Chhattisgarh Co-operative Societies Act, 1960 lays down that "the State Government shall appoint a person to be the Registrar of Co-operative Societies for the State and may appoint one or more officers of the following categories to assist him, namely:

(a) Additional Registrar of Co-operative Societies;
(b) Joint Registrar of Co-operative Societies;
(c) Deputy Registrar of Co-operative Societies;
(d) Assistant Registrar of Co-operative Societies.

As per sub-section (2) of Section 3 of the Act, 1960 "the officers appointed to assist the Registrar shall, within such areas as the State Government may specify, exercise such powers and perform such duties conferred and imposed on the Registrar by or under this Act as the State Government may, by special or general order direct. Sub-section (3) lays down that the officers appointed to assist the Registrar shall be subordinate to him and shall work under his general guidance, supervision and control. Therefore, the Additional Registrar was competent to exercise the powers of Registrar and he exercised that power under the general guidance, supervision and control of the Registrar, and as such the order dated 27th February 2002 was not in any way passed by an officer who was not authorized under the law to pass the said order.

14. As stated above, the petitioner has filed this petition challenging the various show cause notices issued to him and also the order dated 28-2-2002, Annexure-P/49 whereby the Additional Registrar appointed the official assignee of the primary Society i.e. Prathamik Vikas Sabji Fal Phool Utpadak Avam Vipnan Sahkari Samiti Maryadit, Kawardha. As held by the Hon'ble Apex Court in the matter of **Special Director and another v. Mohd. Ghulam Ghouse and another** reported in **2004 AIR SCW 416**, that 'the writ petitions questioning legality of the show cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties is deprecated. Unless, the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court. Therefore, the writ petition against the show cause notices is not maintainable.' And in the order dated 8th. March. 04. disposing of the writ petition No.236 of 2002 it has been held that the petitioner was not entitled to continue after the expiry of five years term from 3-1-2002.

15. In the result, the petition is not maintainable for the following reasons:

(i) As this petition has been filed against the show cause notices which itself is not maintainable, as the Hon'ble Apex Court in the matter of **Special Director and another (Supra)** has held that the petition challenging the show cause notice is not maintainable unless the same is without jurisdiction or contrary to law.

(ii) The petitioner has not challenged the order dated 27-2-2002 passed by Additional Registrar, Co-operative Societies, Chhattisgarh, deregistering the primary Society i.e. Prathamik Vikas Sabji Fal Phool Utpadak Avam Vipnan Sahkari Samiti Maryadit, Kawardha.

(iii) In the order dated 8th. March 04 disposing of the writ petition No.236 of 2002 it has been held that the petitioner was not entitled to continue after the expiry of five years term from 3-1-2002.

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For the foregoing reasons, the writ petition is not maintainable and the same is liable to be dismissed and it is dismissed.

16. Looking to the facts and circumstances of the case, cost is made easy.

Sd/-
Chief Justice
9/3-03-2004

Sd/-
L.C.BHADOO
Judge
8/3-03-2004

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